but did not know the true relationship between petitioner and Ting Pek Hung. I am not impressed by P.W.5 as a witness. I do not believe that he did not know what was going on between petitioner and Ting Pek Hung who occupied room next to his. P.W.5 was not telling the court all that he knew and apparently trying his best to cover up for petitioner.

Isa (D.W.2) and Ling Beng Aik (D.W.3) corroborated substantially respondent's evidence. D.W.2 does not impress me as sincere as D.W.3 who appears to me to be more truthful and honest. Where their evidence conflict I prefer that of D.W.3. D.W.3 runs a coffee shop where respondent, her sister, used to stay whenever she came up from Sungei Gurugu. It was in the shop that the area headman Wong Kung Tuang (P.W.2) used to see her. D.W.3 stated that Ting Pek Hung once worked in Chop Chong Tong Aik, Sarikei, selling petrol. He learned that petitioner was interested in Ting Pek Hung and that they had gone to live in Sibu but he did not believe the story. So at the request of respondent he went to Sibu on 2nd February, 1963 to investigate. In Sibu he went to the vicinity where petitioner and Ting Pek Hung were alleged to be staying together and he saw them peeping out of a window of the first floor of Chop Ban Lee Hiong. He returned to Sarikei and told respondent what he had seen and advised her to see the district officer, Sarikei. From what respondent had said it would appear that petitioner and respondent had seen the district officer and that petitioner denied keeping a mistress.

Several English authorities were referred to me. Though they offer some guidance we should approach them with some care. Here we have a marriage according to Foochow custom which permits a husband to have more than one wife provided the principal wife consents to his taking another wife. Respondent did not appear to have given that consent. Petitioner has to satisfy the court of his sincere desire to resume co-habitation: *Mann* v. *Mann.*[1] Even though the parties have no affection for each other the court may still grant a decree: *Harnett* v. *Harnett;*[2] *Wells* v. *Wells.*[3] That petitioner committed a matrimonial offence is one answer to a petitioner for restitution: *Scott* v. *Scott.*[4] A just cause which does not amount to a matrimonial offence may be a reason for refusing a decree for restitution: *Russell* v. *Russell.*[5] In *Wee Hock Guan* v. *Chia Chit Neo & Another*[6] it was held that an allegation of adultery must be proved beyond reasonable doubt and that the evidence must go beyond establishing suspicion and opportunity to commit adultery and must be such as to satisfy the court that from the nature of things adultery must have been committed.

If what respondent said about the incident at Haji Bujang's house is true then there can be little doubt that petitioner had committed adultery. Further if the respondent is to be believed then petitioner had also failed properly to provide her with maintenance. Between the petitioner and respondent I have no hesitation in accepting the evidence of the respondent who impressed me as an honest and truthful witness. When she was at fault she did not hesitate to admit her wrong. On the other hand petitioner was evasive and did not impress me as a witness of truth.

On the evidence I therefore hold that petitioner has failed to discharge the onus of establishing that respondent deserted him without reasonable cause. Accordingly I dismiss his petition with costs which I assess at $150.

Respondent has prayed for maintenance for herself and their two daughters. Petitioner gave me to understand that he had given her some $50 per month when they were staying with his father. He also gave me to understand that he also supported his father. But his first duty is to his wife and children. He owes his father a moral obligation but he owes his wife and children a legal obligation. I think it is not unreasonable to assess that petitioner could afford to pay $80 per month. This sum is calculated in the sense that $40 is for respondent and $20 each for the daughters. I therefore order petitioner to pay maintenance to respondent and their two daughters $80 per month with effect from 30th November, 1965 and thereafter $80 on the last working day of each subsequent month.

Most of the witnesses called by both parties gave me the impression that they would like to see the parties come together again. I myself would of course like to see the spouses living together in a happy state. I only hope that their relatives and friends and in particular the area headman Wong Kung Tuang would be able to bring about a reconciliation. In that event the parties are at liberty to apply regarding the maintenance order.

Order accordingly.

CHANG KOK SING & ANOR. v. KOO LAN

[F.C. (Thomson L.P., Ong Hock Thye Ag.C.J. (Malaya) MacIntyre J.) November 24, 1965]

[Ipoh — Federal Court Civil Appeal No. 66 of 1965]

Damages — Fatal accident — Loss of expectation of life — Conventional figure.

Negligence — Quantum of damages.

This was an appeal against the decision of the High Court in Ipoh awarding damages to the mother and administratrix of a 17 year old girl cyclist who was killed in an accident in a collision with a motor car at

Gopeng Road. It was clear from the sketch plan of the scene of the accident that the motor car was on its own proper side of the road and that the cycle was on the wrong side of the road. The learned trial judge divided the blame between the driver of the motor car and the cyclist and awarded damages for loss of expectation of life.

Held: (1) as it was clear that the car was on its proper side of the road the accident in this case must be attributed solely to the deceased cyclist's failure or inability to remain on her own side of the road and therefore no blame could be attached to the driver of the car;

(2) the conventional figure for damages for loss of expectation of life in the case of a young adult should be $3,000 and, if the appeal had not been allowed as regards negligence, the amount of damages awarded for loss of expectation of life would have been reduced.

Case referred to:—

(1) *Lee Sai Cheong* v. *Wan Lim Cheong* [1962] M.L.J. 259.

FEDERAL COURT.

N. Sharma for the appellants.

C. Navaratnam for the respondent.

Cur. Adv. Vult.

Ong Hock Thye Ag.C.J. (Malaya) (delivering oral judgment): This is an appeal against a decision of the High Court in Ipoh awarding damages to the mother and administratrix of a 17-year-old girl cyclist who was killed in a collision with a motor-car at the 8¾ milestone Gopeng Road.

The evidence of the three eye-witnesses is quite ambiguous in that none of them was able to say what the behaviour of the deceased cyclist was immediately before the accident. In fact none of them actually saw how the accident happened. There is, however, the evidence of the police inspector who prepared a sketch plan of the scene of the accident; and it is clear from the plan that at no point on the road at the relevant place was the motor-car otherwise than on its own proper side of the road.

The onus of proof of negligence in such cases, of course, rests on the plaintiff and the fact that the car was on its own proper side of the road at all times must lead to the irresistible conclusion that the accident was solely due to the deceased cyclist's failure or inability to remain on her own side of the road.

The learned trial judge in his judgment had divided the blame between the driver of the motor-car and the cylist and it is clear from this that he could not have accepted the explanation of the other cyclists that the deceased and they were at all times cycling on their proper side of the road.

That being the case, for my part, I am entirely satisfied that the accident was due to the cyclist running into the car and not the car running into the cyclist. For that reason it is needless to speculate why the deceased swerved or changed direction as she did. The fact remains that she did swerve into the path of the oncoming vehicle.

The trial judge had found that the point of impact was somewhere near the crown of the road, though he did not say on which side it was. But he thought the driver was partly to blame because, having seen three cyclists riding abreast from as far as 300 feet and having admitted in cross-examination that cyclists riding abreast constituted a danger on the road, the driver nevertheless took no precaution "to avoid this danger". I think that the learned judge forgot to distinguish between the case where danger is actually present when the motorist is overtaking such cyclists from behind, all being on the same side of the road and they being unaware of his approach, and the entirely different circumstances when the cyclists and driver are travelling towards each other and no possible danger can be foreseen so long as the cyclists keep a proper look-out and stay on their own proper side. The driver here had no reason to anticipate that the cyclist would run into him so long as he kept to his own side.

In all the circumstances, therefore, I cannot see that any blame whatsoever attaches to the driver of the car and I would allow this appeal with costs here and in the court below.

Thomson L.P. (delivering oral judgment): I agree with what my Lord has said and as regards the issue of negligence I do not wish to add anything.

I would, however, make one observation and that is that had we been of the contrary opinion as regards negligence we would have felt compelled to reduce the amount of damages awarded for loss of expectation of life. In the case of *Lee Sai Cheong* v. *Wan Lim Cheong* [1] we expressed a reasoned view that the conventional figure in the case of a young adult should be $3,000; and we made it clear that there is no question of depriving any judge of his discretion for, as we pointed out, even the wisest of judges cannot exercise his discretion when there are no materials upon which to exercise it.

In the present case we can see no reason why the conventional figure should have been departed from and we feel that we should take this opportunity of emphasising what we said in the case of *Lee Sai Cheong*.

In my opinion the appeal should be allowed with costs.

MacIntyre J.: concurred.

Appeal allowed.

Solicitors: *N. Sharma; Gibb & Co.*